PROFESSOR BRIGHAM'S CASE AS VIEWED BY A FRIEND

Honolulu, Oct. 21st, 1903.

Editor Advertiser: Much interest is being taken by the readers of your paper in the articles that have lately appeared in regard to Professor Brigham, and we would now say a little in answer to them.

It is most deplorable to those who have found so much that is good, and have obtained so much valuable information from "The Old Man of the Sea," unique in capability for filling the position he has held with so much credit, being familiar with the Islands scientifically and otherwise, that he should have unguardedly incurred the displeasure of the Roman Catholic community of this land!

But for whom is so much ado being shown, even to demanding the head of the learned Professor? For Father Damien, the philanthropist and canonized saint, who has received an everlasting crown of glory from the great Judge of the hearts of men, and who from the throne of God is extending his kindly hands over this erring world, while in the words of his Saviour he pleads, "Father, forgive them!" And like Him, though reviled would revile not again!

In memory then of the sacred dead, honored by all good people alike, we would say, leave the "Fossil of Prehistoric Time" to where he belongs, to the place he has so well built up, and if he be of no more use, the trustees of Pauahi Bishop Estate will be the first to detect it; but if he be of further use, let the land continue to profit by the services he can still render it and which it would take a new man long to be able to do in the same way.

Moreover, the spirit shown by the Professor's accuser, of this morning's paper especially, does not savor of the rational, charitable, calm Catholic, but rather of the agitator whom fanatics and not friends of peace would follow.

To the former class it would be immaterial what opinion a man as a free born American might express of their saint or of others; while to the scientist, were the Satanic Majesty himself to furnish light upon the past history of the rare curios of Polynesia now on view at the Museum, there would seem no harm in going into his presence and regarding him as a valuable acquisition for such a place.

In conclusion, as a friend, one would advise Professor Brigham to be careful never again to be found alone with strangers who might seek to draw him out into free speaking.

WELLWISHER.

TURK SUES HIS WIFE FOR DIVORCE AND NAMES YEAGER

Now comes libellant, Frank J. Turk, by his attorney, J. P. Ball, and for cause of action against libellee, Estrella L. Turk, alleges:

That said libellant is a resident of Honolulu, Territory of Hawaii, and has been a resident of said Territory for more than two years next preceding the application for this libel, and that said libellant and libellee, last resided together as husband and wife at Honolulu aforesaid.

That said libellant and libellee were duly married to each other at Portland, Oregon, on or about the 14th day of October, 1896, by the Rev. Dr. Locke, and ever since have been and are now husband and wife.

That since said marriage libellee has treated libellant in an extremely cruel manner on sundry and numerous occasions and in particular, as follows, to-wit: That on the 1st day of June, 1903, said libellee did at said Honolulu, expel and exclude said libellant from their house and did refuse him admission thereto, and has ever since said time refused to speak or converse with said libellant or allow him access to libellee's domicile or abode.

That for a long time prior to said first day of June, 1903, said libellee had refused this libellant marital relations and treated him with utter disregard, indifference and scorn.

That since said first day of June, 1903, said libellee at said Honolulu has been the keeper or landlady of resorts * * * * * * * * and said libellee entertained until the early hours of morning, amid champagne and other intoxicants and gay hilarity and indecorous conduct, sundry and numerous male companions, to wit, John Doe, Richard Roe and others.

That said libellee, since date above mentioned, has at said resorts in said Honolulu, conducted herself in an offensive, objectionable * * * manner, all of which has been to the distress, mortification and detriment of this libellant.

That the deeds, actions and conduct of said libellee so as aforesaid, have caused this libellant such intense mental anguish and suffering, that his health became undermined and his nervous and physical system became so weakened and impaired thereby that his health and future physical welfare have been and are placed in great jeopardy thereby. * * *

Wherefore libellant prays that the bonds and ties of matrimony existing between him and libellee be dissolved and severed and for such other relief as this court may deem equitable and meet.

(Signed) FRANK J. TURK, Libellant.

Henry Yeager, a member of the Legislature, is named as corespondent.

Nothing in It.

Apropos of a sensational war story in the afternoon papers, Consul General Saito, being on Hawaii, could not have notified the Nippon Maru of the existence of war between Russia and Japan. The Secretary of the Consulate denies that he did so and says that he has received no alarming messages from his foreign office or from any other source.

St. Clement's Guild Fair is postponed until November 21.

Japanese Fair.

At the Japanese fair to be held at the corner of Hotel and Richards streets next week Thursday and Friday there will be booths of Japanese fancy and useful articles, Hawaiian curios, American articles of home manufacture; "Rummage" goods of great variety, pictures painted while you wait and otherwise, and paper flowers. Also a Japanese tea house, lunches (American), ice cream, lemonade, candy made on the grounds, etc. Proceeds for the Japanese Methodist school and church building fund. Remember the dates, October 29th and 30th.

MORE CANDIDATES OF THE REPUBLICANS

NORMAN K. LYMAN.

Nominated by both Republicans and Home Rulers for Clerk of East Hawaii County.

FRANK PAHIA.

Republican candidate for Supervisor from the Fifth District of Oahu County.

R. N. BOYD.

Republican candidate for Surveyor of Oahu County.

S. C. DWIGHT.

Republican candidate for Supervisor from the Fifth District of Oahu County.

TOURIST TRAFFIC IS BOOMING

Thomas Cook & Son excursion party of twenty-five members, along with a Clark Company of Eastern tourists arrived on the Nippon Maru and registered at the Hawaiian hotel, evening before last. A reading of the hotel register shows tourists as coming from many different parts of the world, viz: Cairo, Paris, Italy, Germany, South Africa, England, New York, Indiana and Ohio. Two more excursion parties, due by the Siberia next week, some thirty or more, have written ahead for accommodations at the Hawaiian hotel—one being a Cook & Son Boston party and the other a Collver & Co. excursion party from New York.

THE OLD LIQUOR LAWS REMAIN IN FULL FORCE

Judge Gear in This Instance Discovers That Constitutional Law is Not Omnipotent to Overrule Common Sense.

Judge George D. Gear yesterday morning rendered his decision on the liquor laws of the Republic of Hawaii, finding that they are in full force and effect under the Territory excepting as they have been expressly repealed by the Legislature or the Organic Act. It was on a motion to quash the indictment of one Simoes for selling liquor without a license. Much of the court's deliverance is taken up with quotations from the brief of defendant's counsel in support of the motion. The extracts given below, as connected by the reporter, will give a complete understanding of the decision.

THE DEFENDANT'S CLAIM.

After stating the case and quoting at length from defendant's brief, the court says:

Defendant claims that by the express term of section six of the Organic Act only "the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this act shall continue in force" etc, and that as the Hawaiian laws relating to the liquor traffic have not been enacted by the Territorial Legislature they are inconsistent with Section 55 of that act prohibiting the sale of such liquor "except under such regulations and restrictions as the Territorial Legislature shall provide."

Defendant claims that this limits the regulations and restrictions to acts of the Territorial Legislaure as distinguished from the Legislature of the Islands prior to annexation, and that it must be future legislation considered in reference to the time of the passage of the Organic Act. * * *

Counsel for defendant says in his brief: "Is there any legal power within the Territory of Hawaii at the present time to issue licenses for the sale of spirituous liquors?

"Sec. 55 of the Organic Act provides: 'Nor shall spirituous or intoxicating liquors be sold except under such regulations and restrictions as the Territorial Legislature shall provide.'

"This Act was approved April 30, 1900, and became operative on June 14, of the same year. The wording, as plainly as language can express, makes a positive prohibition of the sale of spirituous or intoxicating liquors, unless such sale is regulated by the Territory."

INTENT OF CONGRESS.

Judge Gear quotes the defendant's contention, with references to debates in Congress, that the intention of Congress was clearly to prohibit the liquor traffic in Hawaii until the Legislature of the Territory might permit it under "such regulations and restrictions" as it might provide. On this the court says:

From a review of the congressional debates it seems to me that while the amendment to the Organic Act under dispute was originally inserted in the bill for the purpose of prohibiting the sale of liquor at retail, it is also apparent that the amendment finally adopted was for the purpose of once for all settling the question as to whether Congress or the local Legislature should have control of the liquor legislation for this Territory.

If the contention of defendant's counsel is correct this provision must be interpreted so as to allow the unlicensed and unlimited sale of liquor in this Territory until the Territorial Legislature shall act, thus giving to the amendment an effect diametrically opposite to that which even counsel for defendant contends was the intent of Congress, and instead of absolute prohibition we will have an unlimited and absolute, unrestricted liquor traffic.

As stated in the language of another court:

"It follows then, on relator's theory, that the constitutional convention, which sought to give the state absolute prohibition, in fact gave it untrammeled liquor traffic, and provided that such untrammeled traffic should continue indefinitely, unless some Legislature, to be elected in the future should voluntarily elect to check the flood of intoxicants that the constitution turned loose on the state. Such a conclusion is so at variance with all past legislation on the subject * * * so at variance with the intent and expectation of the framers of our constitution, that this court ought not to reach it unless forced thereto by the clear rules of construction, or the obvious meaning of the language employed."

North Dakota ex rel Olguist vs. Swan, 1 North Dakota, p. 11.

NORTH DAKOTA CASE.

The court quotes from the language used in a North Dakota case and comments thus:

In the case cited it appears that while Dakota was a territory certain liquor laws were enacted. Thereafter the State of North Dakota was organized, and a constitution adopted which provided that no one should within the state manufacture, import or keep for sale any intoxicating liquors "or offer the same for sale or gift, barter or trade as a beverage." "The legislative assembly shall by law prescribe regulations for the enforcement of the provisions of this article, and shall thereby provide suitable penalties for the violation thereof." * * *

Defendant contended that the liquor laws of the Territory "in so far as it provides for the issuance of a license" was repugnant to the act of Congress and the state constitution, and as stated by the court "the position of relator leads to the inevitable conclusion that there is today, in North Dakota, no law by which the open and notorious sale of intoxicating liquors for any purpose, and in any quantity, can be punished."

The court, however, held that as the constitutional provision prescribed no penalties for its violation, it was "barren of the elements of a complete law, and while prohibitory in form, is in fact simply a declaration of principles," and that the provision "is not self-executing, no common law, no statutory provision, existing for its enforcement, hence it remains dormant, as a restriction upon the citizens, until given life by subsequent legislation, and has no force as a repealing measure," and that therefore the Territorial license law "stands in its entirety," and that therefore the defendant's imprisonment was not unlawful.

AUTHORITIES ADOPTED.

A case is cited from Massachusetts, where a constitutional provision was adopted prohibiting forever the manufacture and sale of intoxicating liquors, and directing the Legislature to enact laws with suitable penalties for carrying out such provision. There it was held that the constitutional provision did not repeal previously existing laws by implication pending action of the Legislature in the matter. Judge Gear comments as follows:

I agree with the reasoning of these authorities and believe the case at bar falls within the principles laid down in the cases cited. These cases go even farther than the case at bar, for under both the constitution of Maine and North Dakota it was intended to have absolute prohibition in the liquor traffic, and yet it was held that the former liquor laws were not repealed, and would not be until there had been legislative action. In this case it is clear that congress did not intend to prohibit the liquor traffic, but on the contrary to allow it under the "regulations and restrictions" of the legislature. In this connection it seems to me appropriate to quote from the United States Supreme Court as to what is commonly called "the right of citizens" to engage in the liquor traffic, and their statement as to the constitutionality of the liquor laws and the right of the legislature to regulate the traffic. A defendant had been found guilty of selling liquor without license, and claimed that this arrest was illegal, as the ordinance under which he was convicted was unconstitutional.

The court in a unanimous opinion said per Field, J.:

QUESTION OF RIGHTS.

"It is undoubtedly true that it is the right of every citizen of the United States to pursue any lawful trade or business, under such restrictions as are imposed upon all persons of the same age, sex and condition. But the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. * * *

"For the pursuit of any lawful trade or business, the law imposes similar conditions. Regulations respecting them are almost infinite, varying with the nature of the business. Some occupations by the noise made in their pursuit, some by the odors they engender and some by the dangers accompanying them, require regulations as to the locality in which they shall be conducted. Some by the dangerous character of the articles used, manufactured or sold require, also, special qualifications in the parties permitted to use, manufacture or sell them. All this is but common knowledge, and would hardly be mentioned were it not for the position often taken, and vehemently pressed, that there is something wrong in principle and objectionable in similar restrictions when applied to the business of selling by retail, in small quantities, spirituous or intoxicating liquors. It is urged that, as the liquors are used as a beverage, and the injury following them, if taken to excess, is voluntarily inflicted and is confined to the party offending, their sale should be without restrictions, the contention being that what a man shall drink, equally with what he shall eat, is not properly a matter for legislation.

DRINK EVIL FAR-REACHING.

"There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates; but, as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time are sold indiscriminately to all parties applying." * * *

CONCLUSION OF COURT.

It is the opinion of the Court that the statutes of the Republic of Hawaii relating to the liquor traffic are in full force and effect excepting as they have been expressly repealed by the Legislature or the Organic act, and that the section under which this defendant was indicted is in full force and effect, and that the defendant's motion to quash the indictment should be and it is hereby denied.

GEO. D. GEAR,
Second Judge of the First Circuit.
Oct. 21, 1903.

SAFE CASE TOUGH ONE

Jury Divided Till Late Last Night.

Judge De Bolt was engaged yesterday with the trial of Wo Sing & Co. vs. Kwong Chong Wai Co., assumpsit for $4143.83. Thayer & Hemenway appeared for plaintiff, and Castle & Withington and W. L. Whitney for defendant. The following jury are trying the case, which is still on: E. E. Mossman, Jno. Kuaana, Jas. A. Auld, G. C. Potter, P. M. Lucas, M. W. Parkhurst, B. Guerrero, C. M. Dwight, O. J. Holt, I. Adams, G. H. Karratti and E. C. Holstein.

HEAVY SENTENCE.

"Matsumoye: It is the judgment and sentence of this court that you be imprisoned at hard labor for the period of twenty-five years."

This was the sentence pronounced by Judge Gear yesterday morning upon Matsumoye, whom a jury had found guilty of robbery in the first degree. When the usual question was asked of the defendant if he had anything to say why sentence should not be passed at that time his counsel, J. W. Cathcart, addressing the court asked for leniency on behalf of the defendant and, when sentence was passed, noted an exception thereto.

In passing sentence the Judge remarked on the recent prevalence of highway robbery and said that light sentences would not have the deterring effect which was an object of punishment. It was not important in the case that the amount of money taken from the victim was small.

Matsumoye, as was testified by High Sheriff Brown, had been employed temporarily as a police officer. He retained the badge and the pistol belonging to the police department, which articles he used to impersonate a policeman in holding up a Chinaman near Waikiki turn. He is 24 years of age.

Assistant Attorney General W. S. Fleming prosecuted the case.

MACHADO ACQUITTED.

The jury trying Joachim Machado under indictment for assault with a deadly weapon, in stabbing A. V. Peters with a knife in defendant's house at Kaimuki, retired after being lengthily instructed upon requests of counsel on both sides and the court's own motion at 1 p. m. yesterday. Not having agreed on a verdict at 2 o'clock the jury were sent downtown to lunch.

Henry Hogan delivered the closing address to the jury for the defendant. He laid stress on what he characterized as the unwarranted entry of Peters into his brother-in-law's house to lecture the master of the castle on his habits and argued a case of self-defense from the evidence.

A. G. M. Robertson replied for the prosecution. Admitting the well-known and ancient "castle" theory, he contended that it did not imply that relatives, friends or acquaintances might not lawfully visit a private home. If a visitor was not welcome he could be requested to leave and if he refused might be ejected by just so much force as was necessary but no more. There was no justification for the use of a weapon in such a case unless to defend person or property from violence. The evidence that defendant was held in a corner and throttled by Peters before the former seized a knife and stabbed the latter was ridiculed and represented from the plan of the house and articles of furniture to be unbelievable. Counsel maintained that only a miracle saved Peters from being pierced through the heart, as the knife had been stopped by striking a rib.

At 4:15 the jury came into court with a verdict of not guilty and the defendant was discharged.

COMPLICATED CASE.

F. Santos was placed on trial yesterday afternoon for embezzlement of a steel safe from a Chinaman. W. S. Fleming, Assistant Attorney General, prosecuted and J. Lot Kaulukou defended the accused. After but a single challenge by the prosecution, the following jury was found satisfactory and sworn: Jesse P. Makainai, E. H. Wodehouse, J. F. C. Abel, Geo. W. Hayselden, David F. Thrum, Chas. Spencer, A. K. Vierra, Jas. D. Cockett, Jos. K. Clark, W. M. Bush, Jas. B. Pakele and Wm. H. Hoogs.

The jury retired at 4:20. At 5:30 they sent in word that it was impossible for them to agree. Judge Gear ordered them taken out for dinner, while the court took recess until 7 o'clock.

In the meantime Mr. Kaulukou informed the court of the defendant's previous sentence the present term elsewhere reported.

At 7:40 the jury came in for instructions, when Juror Clark stated his doubt on evidence as between loan and purchase of the safe. He gave the impression that he was the only one hanging out, which was later dispelled. Judge Gear repeated his instruction that if they believed the transfer of the article was a purchase, even if no money was paid, they could not find the defendant guilty.

The jury came in again at 8:26 and said they could not agree. Clark said they had taken seven ballots and stood, with but one variation, seven to five all the time. He blurted out, before the Judge could check him, that the seven were for acquittal. Juror Hoogs interjected the statement that Mr. Hayselden and not the volunteer spokesman was their foreman. Judge Gear, with renewed instructions, sent the jury out to try again. Up to 10 o'clock they made no sign.